

**SIDNEY STRICKLAND AND ASSOCIATES, PLLC**

3050 K ST. N.W., SUITE 101  
WASHINGTON, DC 20007-5108  
TELEPHONE: 202-295-4024  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

JAN 13 2006  
RECEIVED

215558

January 13, 2006

Vernon A. Williams, Secretary  
Surface Transportation Board  
Case Control Unit, Suite 713  
1925 K Street, N.W.  
Washington, DC 20423-0001

Office of Proceedings

Part of  
Public Record

**Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption—in Park County, WY**

Dear Mr. Williams:

Enclosed please find an original and 10 copies of the Verified Notice of Exemption under 49 C.F.R. 1152.50 for filing with the Board in the above-referenced matter.

Also enclosed is a check in the amount of \$3,000.00 for the filing fee.

Very truly yours,

  
Sidney L. Strickland, Jr.

Attorney for BNSF Railway Company

215558

BEFORE THE  
SURFACE TRANSPORTATION BOARD

JAN 13 2006  
RECEIVED

BNSF RAILWAY COMPANY --  
ABANDONMENT EXEMPTION --  
IN PARK COUNTY, WY

DOCKET NO. AB-6  
(SUB-NO. 436X)

VERIFIED NOTICE OF EXEMPTION  
UNDER 49 C.F.R. § 1152.50

BNSF RAILWAY COMPANY  
2650 Lou Menk Drive  
P.O. Box 96157  
Forth Worth, TX 76161-0057

ENTERED  
Office of Public Records

Filed for  
Public Records

By: SIDNEY L. STRICKLAND, JR  
SIDNEY STRICKLAND AND ASSOCIATES  
3050 K Street, N.W.,  
Suite 101  
Washington, DC 20007  
(202) 295-4024

Attorney for BNSF Railway Company

FILED

JAN 13 2006

TRANSPORTATION BOARD

DATE FILED: January 13, 2006

FEE RECEIVED

TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**BNSF RAILWAY COMPANY --  
ABANDONMENT EXEMPTION --  
IN PARK COUNTY, WY**

**DOCKET NO. AB-6  
(SUB-NO. 436X)**

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**VERIFIED NOTICE OF EXEMPTION  
UNDER 49 C.F.R. § 1152.50**

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BNSF RAILWAY COMPANY (BNSF) ("Applicant") files this Verified Notice of Exemption under 49 C.F.R. 1152 Subpart F- Exempt Abandonments (49 C.F.R. 1152.50) for BNSF to abandon a rail line that extends between BNSF Milepost 42.59 and Milepost 42.70 near Cody, in Park County, Wyoming (the "Line").

The Line is depicted in a map that is attached to this Notice as Appendix 1.

**Responses to 49 C.F.R. § 1152.50(d)(2):**

I. *Proposed consummation date for the abandonment.*

The proposed consummation date of this abandonment will be at least 50 days from the filing date of January 13, 2006, which is March 4, 2006.

II. *Certification required in 49 C.F.R. § 1152.50(b)*

The required certifications are attached hereto as Appendix 2.

III. *Information required by 49 C.F.R. § 1152.22(a)(1-4), (7) and (8) and (e)(4).*

(a) General

(1) Exact name of Applicant.

BNSF Railway Company (BNSF).

- (2) *Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.*

Applicant is a common carrier by railroad subject to 49 U.S.C.

Subtitle IV, Chapter 105.

- (3) *Relief sought (abandonment of line or discontinuance of service).*

BNSF seeks to use the class exemption from the Surface

Transportation Board approval authorizing the abandonment and

discontinuance of service of the Park County, WY line specified above.

- (4) *Detailed map of the subject line.*

See Appendix 1.

- (7) *Name, title and address of representative of applicant to whom correspondence should be sent:*

Sidney L. Strickland, Jr.  
Sidney Strickland And  
Associates, PLLC  
3050 K Street, N.W.  
Suite 101  
Washington, DC 20007  
(202) 295-4024

Attorney for BNSF Railway Company

- (8) *List of all United States Postal Service ZIP Codes that the line traverses.*

The Line traverses United States Postal Service Zip Code 82414.

- (e)(4) *Statement of whether the properties proposed to be abandoned are suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission or recreation. If the applicant is aware of any restriction on the title to the property, including any*

*reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.*

The properties of the proposed abandonment appear to be appropriate for other public purposes. Based on information in our possession, the line does contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

IV. *Level of Labor Protection.*

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions set forth in *Oregon Short Line RR Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979).

V. *Certification that Applicants have complied with the notice requirements of 49 C.F.R. §§ 1152.50(d)(1) and 1105.11.*

The required certifications are set forth in Appendix 3 to this Notice of Exemption.

VI. *Environmental and Historic Reports.*

A combined Environmental and Historic Report is attached to this Notice of Exemption as Appendix 4.

Respectfully submitted,

BNSF RAILWAY COMPANY  
2650 Lou Menk Drive  
P.O. Box 96157  
Forth Worth, TX 76161-0057



By: ~~SIDNEY L. STRICKLAND, JR.~~  
SIDNEY STRICKLAND AND ASSOCIATES  
3050 K Street, N.W.,  
Suite 101  
Washington, DC 20007  
(202) 295-4024

Attorney for BNSF Railway Company

DATE FILED: January 13, 2006

## APPENDIX 1

*Detailed Map of the Line*

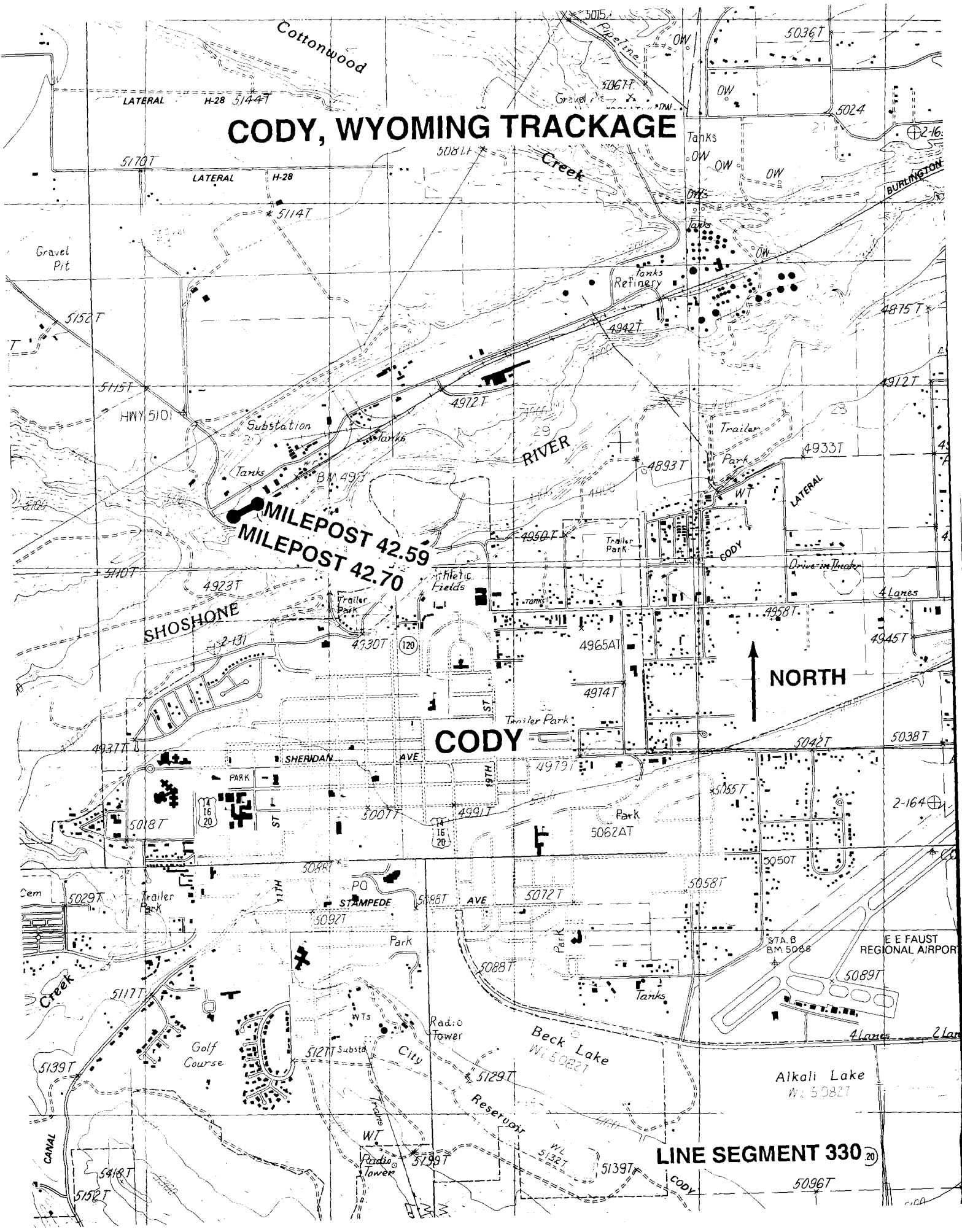
LATERAL H-28

SHOSHONE

# CODY

**NORTH**

**LINE SEGMENT 330**



## APPENDIX 2

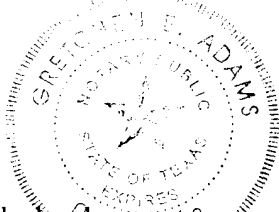
*Certifications Required in 49 C.F.R. § 1152.50(b)*

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS  
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

I, Richard A. Batie, being duly sworn depose and state that I am as Manager, Network Development in the Network Development department of the BNSF Railway Company ("BNSF"), that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

In accordance with 49 C.F.R. § 1152.50(b), I hereby certify that, with respect to the line which is the subject of the Notice of Exemption filed in Docket No. AB-6 (Sub-No. 436X ), no local traffic has moved on the line for at least two (2) years prior to the date hereof. Also, there is no overhead traffic handled on the Line to be rerouted. Further, no formal complaint filed by a user of rail service on the Line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period.

The foregoing certification is made on behalf of BNSF by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned



Subscribed and sworn to before me the 1st day of January, 2006.

Richard A. Batie

Richard A. Batie  
Manager, Network Development

Gretchen E. Adams

## APPENDIX 3

*Certification that Applicants Have Complied with the Notice  
Requirements of 49 C.F.R. 1152.50(d)(1) and 1105.11*

## CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.50(d)(1), the undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-6 (Sub. No. 436X) was mailed via first class mail on January 3, 2006 to the following parties:

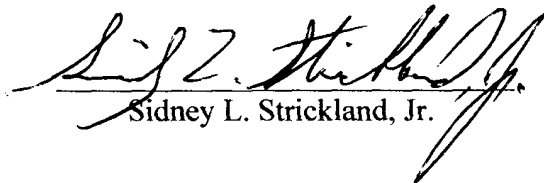
State Planning Coordinator's Office  
State Capital Building  
Room 124  
Cheyenne, WY 82002

Military Traffic Management Control  
Attn: Railroads for National Defense  
720 Thimble Shoals Boulevard, #130  
Newport News, VA 23606-2574

U.S. Department of the Interior  
National Park Service  
Recreational Resources Assistance Division  
1849 C Street, NW  
Washington D.C. 20240-0001

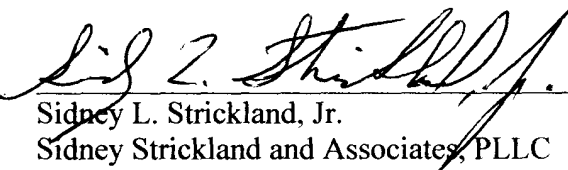
U.S. Department of Agriculture  
Chief of the Forest Service  
4<sup>th</sup> Floor N.W., Yates Building  
201 14<sup>th</sup> Street, SW  
Washington, D.C. 20250

Dated January 13, 2006

  
Sidney L. Strickland, Jr.

**CERTIFICATION OF COMPLIANCE WITH THE**  
**NEWSPAPER PUBLICATION REQUIREMENTS**  
**OF SECTION 49 C.F.R. § 1105.12**

The undersigned certifies that a "Notice of Intent to Abandon Rail Service" was published in the form prescribed by the Board for out of service abandonment exemptions. The notice was published one time in the following newspaper of general circulation in Park County, Wyoming. Publication of notice was accomplished on January 9, 2006 in the *Cody Enterprise*. An Affidavit of Publication certifying publication is attached.



Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K Street, NW  
Suite 101  
Washington, DC 20007  
Phone: (202) 295-4024  
Fax: (202) 672-5499

## Affidavit of Publication

THE STATE OF WYOMING,  
COUNTY OF PARK

I, **Bruce McCormack** do solemnly swear that I am the publisher of THE CODY ENTERPRISE, a weekly newspaper of general circulation, published weekly at Cody, Park County, Wyoming; that the notice attached, and which is part of this affidavit and a part of the proof of publication of legal

**Legal 9218**

**Abandon Rail Service**

**Sidney Strickland and Associates, PLLC**

was published in said newspaper 1 consecutive weeks the first publication having been made on the 9 day of **January 2006** and the last publication on the 9 day of **January 2006**. Notice was published in the regular and entire issue of every number of the said paper during the period and time of publication, and that the notice was published in the newspaper proper, and not in a supplement.

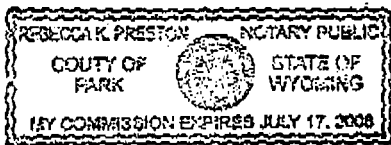
In testimony whereof, I have hereunto set my hand this 10 day of **January 2006**.

*Bruce E. McCormack*

Subscribed and sworn to before me this 10 day of **January 2006**. My commission expires **July 17, 2008**.

Fees \$137.50

*Rebecca K. Preston*



### Rail Service

STB DOCKET NO. AB-6,  
(SUB. NO. 436X)

NOTICE OF INTENT TO PRIVATE

ABANDON RAIL SERVICE  
BNSF RAILWAY COMPANY  
(BNSF) gives notice that on or about January 13, 2006, it intends to file with the Surface Transportation Board (the Board), Washington, DC, 20423, a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments, permitting the abandonment of a 0.11 mile line of railroad between Milepost 42.59 and Milepost 42.70 near Cody in Park County, Wyoming, which traverses through United States Postal Service Zip Code 82414. The proceeding will be docketed as STB Docket No. AB-6 (Sub. No. 436X).

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice. For more information, contact the SEA at 202-585-1592. Copies of any comments or requests for con-

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Legal Notices

ditions should be served on the applicant's representative: Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, Suite 101, Washington, DC, 20007-5108.

Publish: January 9, 2006 only  
No. 9218

## APPENDIX 4

### *Environmental and Historic Reports*

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**BNSF RAILWAY COMPANY --  
ABANDONMENT EXEMPTION --  
IN PARK COUNTY, WY**

**DOCKET NO. AB-6  
(SUB. NO. 436X)**

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**ENVIRONMENTAL AND HISTORIC REPORTS**

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BNSF RAILWAY COMPANY  
2650 Lou Menk Drive  
P.O. Box 96157  
Forth Worth, TX 76161-0057

By: SIDNEY L. STRICKLAND, JR.  
SIDNEY STRICKLAND AND ASSOCIATES  
3050 K Street, N.W.,  
Suite 101  
Washington, DC 20007  
(202) 295-4672

Attorney for BNSF Railway Company

DATED: December 22, 2005

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**BNSF RAILWAY COMPANY --  
ABANDONMENT EXEMPTION --  
IN PARK COUNTY, WY**

**DOCKET NO. AB-6  
(SUB. NO. 436X)**

**ENVIRONMENTAL AND HISTORIC REPORTS  
(49 C.F.R. 1105.7 AND 49 C.F.R. 1105.8)**

Pursuant to 49 C.F.R. § 1105.7 and § 1105.8, BNSF Railway Company (BNSF) (referred to as "Applicant") hereby files Environmental and Historic Reports. These Reports constitute Applicant's assessment of the environmental effects and historic effects of abandonment of rail service on the involved rail line. Persons who review these Reports are entitled to provide comments to the Surface Transportation Board (STB), Section of Environmental Analysis (SEA), 1925 K Street, N.W., Suite 500, Washington, DC 20423. There is information in the Applicant's files to indicate that the rail line covered by these Reports contains a federally granted right-of-way. *See* 49 C.F.R. § 1152.60(d). These Reports have been prepared in conjunction with the prospective filing of a Notice for Exemption of abandonment of the involved rail line. STB regulations provide that the Notice of Exemption cannot be filed until at least 20 days after these Reports are submitted.

**I**  
**ENVIRONMENTAL REPORT**  
**(49 C.F.R. 1105.7)**

The following information is submitted to the STB by BNSF in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption for abandonment of its line between BNSF Milepost 42.59 and Milepost 42.70 near Cody, in Park County, Wyoming (the "Line").

**(1) Proposed Action and Alternatives:** Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF seeks to abandon this Line. The proposed abandonment may include removal of all rails and ties. There are no bridges or structures on the Line. A map of the line is attached as Exhibit A.

**(2) Transportation System:** Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed abandonment will have no affect on existing transportation systems or patterns as there has been no local traffic on the Line for over two years.

**(3) Land Use:**

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

BNSF believes the proposed abandonment will not be inconsistent with local or regional land use plans. The Wyoming Department of Transportation (WYDOT) contacted the city of Cody, Park County, and the WYDOT Railroad Compliance Officer and Resident Engineer, and indicates the proposed abandonment does not appear to conflict with any future plans of WYDOT or local/county governments and is consistent with local land use plans. The WYDOT is not aware of any alternate public uses for the corridor at this time. See Exhibit B, letter from Gary M. Michaud, M.B.A., Planner, Wyoming Department of Transportation. Park County's position is that the proposed action will not affect its land use plan and it is not aware of any alternative public uses for the corridor. See Exhibit C, letter from Tim A. French, Marie Fontaine, and Bucky Hall, Board of County Commissioners, Park County, Wyoming. See also Exhibit D, letter from Frank Page, PE, Park County Engineer.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agriculture land.

The proposed abandonment should have no effect on prime agricultural lands. The Natural Resources Conservation Service (formerly known as the U.S. Soil Conservation Service) indicates there will be no effects on prime agricultural lands. See Exhibit E, letter from Dicksie Michael, District Conservationist, Powell Field Office, Natural Resources Conservation Service.

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and

explain why.

The Wyoming Department of Transportation (WYDOT) contacted the city of Cody, Park County, and the WYDOT Railroad Compliance Officer and Resident Engineer, and indicates the proposed abandonment does not appear to conflict with any future plans of WYDOT or local/county governments and is consistent with local land use plans. The WYDOT is not aware of any alternate public uses for the corridor at this time. See Exhibit B, letter from Gary M. Michaud, M.B.A., Planner, Wyoming Department of Transportation. Park County's position is that the proposed action will not affect its land use plan and it is not aware of any alternative public uses for the corridor. See Exhibit C, letter from Tim A. French, Marie Fontaine, and Bucky Hall, Board of County Commissioners, Park County, Wyoming. See also Exhibit D, letter from Frank Page, PE, Park County Engineer.

**(4) Energy:**

(i) Describe the effect of the proposed action on transportation of energy resources.

There are no known recoverable energy resources along the Line. There has been no local traffic on the line for over two years.

(ii) Describe the effect of the proposed action on recyclable commodities.

This abandonment will not adversely affect movement or recovery of recyclable commodities as there has been no local traffic on the line for over two years.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

This abandonment will not result in an increase or decrease in overall energy efficiency as there has been no local traffic on the Line for over two years.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

There will be no diversions of traffic as there has been no local traffic on the Line for over two years.

**(5) Air:**

(i) If the proposed action will result in either:

(A) An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

(B) An increase in rail yard activity of at least 100% (measured by carload activity), or

(C) An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not result in meeting or exceeding the specified thresholds.

Moreover, the action will not involve an increase in truck traffic of more than 10% or 50 vehicles a day on any affected road segment as there has been no local traffic on the Line for over two years.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State Implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The action will not result in meeting or exceeding the specified thresholds.

Moreover, the proposed abandonment will not result in an increase of rail or truck traffic as there has been no local traffic on the Line for over two years.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and Freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

The proposed abandonment will not affect the transportation of ozone depleting materials.

**(6) Noise:** If any of the thresholds identified in item (5) (i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

**(7) Safety:**

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This abandonment should have no adverse effect on health or public safety. There are no public crossings and no private crossings on the Line. During salvage operations, if any may be required, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials.

The abandonment will not result in the transportation of hazardous materials.

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

There are no known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way.

**(8) Biological Resources:**

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

The U.S. Fish and Wildlife Service (Service) indicates there are two endangered or threatened species which may be present in the area of the proposed action: the bald eagle and the Ute ladies'-tresses orchid. For the bald eagle, the Service recommends that BNSF implement protective buffers around

areas of bald eagle nests and communal roosts, and that BNSF obtain current information regarding eagle activity within one mile of the project area or conduct a raptor survey during the appropriate time of year by a person qualified in raptor ecology. For the Ute ladies'-tresses, the Service recommends that BNSF determine if suitable habitat for the Ute ladies'-tresses will be disturbed. The Service also made recommendations as to migratory bird species other than raptors and bats, although the Service did not include these species on its list of threatened or endangered species. See Exhibit F, letter from Brian T. Kelly, Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service. The Bureau of Land Management states there are no endangered or threatened species, wildlife sanctuaries, refuges, or areas designated as critical habitat adjacent on or near the proposed line of abandonment. See Exhibit G, letter from Duane Feick, Bureau of Land Management.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The National Park Service has reviewed the subject project and has determined that there are no National Park Service units affected and no Natural Landmarks affected. See Exhibit H, letter from Wayne Gardner, Chief of Planning and Environmental Quality, Intermountain Region, National Park Service. The Bureau of Land Management states there are no endangered or threatened species, wildlife sanctuaries, refuges, or areas designated as critical habitat adjacent on or near the proposed line of abandonment. See Exhibit G, letter from Duane Feick, Bureau of Land Management.

**(9) Water:**

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

BNSF believes the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The Environmental Protection Agency (EPA) states the project does not require stormwater permit coverage as the area of the project from Milepost 42.59 to 42.70 is less than one acre. See Exhibit I, letter from Gregory David, Region 8, Environmental Protection Agency. The Department of Environmental Quality indicates it is unlikely that the proposed abandonment will require either a general permit or a WYPDES permit. See Exhibit J, letter from Roland Peterson, P.G., Senior Analyst, WYPDES Permitting, Water Quality Division, Department of Environmental Quality, Wyoming.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

BNSF believes the proposed abandonment will not require a Section 404 permit. The U.S. Army Corps of Engineers (Corps) states that if construction activities involve any work in waters of the United States, a Section 404 permit may be required. The Corps also indicates that the abandonment plans should be coordinated with the U.S. Environmental Protection Agency, which is currently involved in a program to protect ground water resources. Finally, the Corps recommends BNSF consult with the U.S. Fish and Wildlife Service and the Wyoming Fish and Game Department regarding fish and wildlife resources. Additionally, the Corps recommends that BNSF contact Wyoming State

Preservation Office for information and recommendations on potential cultural resources in the project area. BNSF has already contacted the agencies required by the Board's regulations including The U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the Wyoming State Preservation Office. See Exhibit K, letter from Candace M. Gorton, Chief, Environmental, Economics, and Cultural Resources Section, Planning Branch, Omaha District, Army Corps of Engineers. Also, the U.S. Fish and Wildlife Service recommends measures be taken to avoid and minimize wetland losses in accordance with Section 404 of the Clean Water Act and Executive Order 11988 (flood plain management) as well as the goal of "no net loss of wetlands." See Exhibit F, letter from Brian T. Kelly, Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service.

BNSF believes the proposed abandonment will not affect any 100-year flood plains. The Corps does not have any flood plain related comments. See Exhibit K, letter from Candace M. Gorton, Chief, Environmental, Economics, and Cultural Resources Section, Planning Branch, Omaha District, Army Corps of Engineers.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required).

BNSF believes a Section 402 permit will not be required for the proposed action. The EPA states the project does not require stormwater permit coverage as the area of the project from Milepost 42.59 to 42.70 is less than one acre. The EPA also submitted the requirements to follow if the project was greater than one acre. See Exhibit I, letter from Gregory David, Region 8, Environmental

Protection Agency. The Department of Environmental Quality (DEQ) indicates it is unlikely that the proposed abandonment will have a point source discharge of water from the construction project. The DEQ states that point source discharges reaching the waters of the state of Wyoming require a WYPDES permit, and short term construction dewatering, involving less than 12 months of discharge, is covered by a general permit in Wyoming. The DEQ further indicates that it appears especially unlikely that BNSF would need coverage for longer than 12 months, requiring an individual permit. However, the DEQ submitted the requirements to follow if coverage is required. See Exhibit J, letter from Roland Peterson, P.G., Senior Analyst, WYPDES Permitting, Water Quality Division, Department of Environmental Quality, Wyoming.

**(10) Proposed Mitigation:** Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

The project itself should mitigate the environmental effects of reinstating active rail operations.

## II

### HISTORIC REPORT (49 C.F.R. 1105.8)

Applicants hereby submit the following information required by 49 C.F.R. § 1105.8(d):

*(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;*

The required topographic map is attached to this Report as Exhibit A.

*(2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;*

The Line is approximately 0.11 miles long and is located at the end of a branch line that goes to Cody, Wyoming. The trackage is located in a commercial area of Cody and will be used for turning trucks from a nearby rail served cement transload. The right-of-way is 200 feet wide.

Cody had a population of 8,835 in the year 2000.

There are federally granted rights-of-way involved in this proposed abandonment.

*(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;*

There are no railroad structures on the property that are 50 years old or older.

*(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;*

N/A

- (5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;*

The right-of-way was acquired by the Chicago, Burlington and Quincy Railroad (CBQ) in 1875. In 1970, the CBQ merged with other railroads to become The Burlington Northern Railroad (BN). In 1995, BN merged with The Atchison, Topeka and Santa Fe Railway Company to become The Burlington Northern and Santa Fe Railway Company (BNSF). In 2005, BNSF changed its name to BNSF Railway Company.

- (6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;*

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

- (7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);*


The Wyoming State Historic Preservation Office (SHPO) has reviewed the project and find the documentation meets the Secretary of the Interior's Standards for Archeology and Historic Preservation (48 FR 44716-42). SHPO

also indicated that "the National Register of Historic Places (NRHP) eligible Chicago Burlington and Quincy Railroad (48PA226) is known to exist near the area of potential effect but will not be adversely affected by the project as planned." SHPO recommends the STB allow the project to proceed in accordance with state and federal laws and subject to the following stipulation: If any cultural materials are discovered during construction, work in the area shall halt immediately, the federal agency must be contacted, and the materials evaluated by an archaeologist or historian meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 22716, Sept. 1983). SHPO states its letter should be retained in BNSF files as documentation of a SHPO concurrence in BNSF's finding of no historic properties adversely affected. See Exhibit L, letter from Sara E. Needles, Acting State Historic Preservation Officer, Wyoming State Historic Preservation Office.

*(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.*

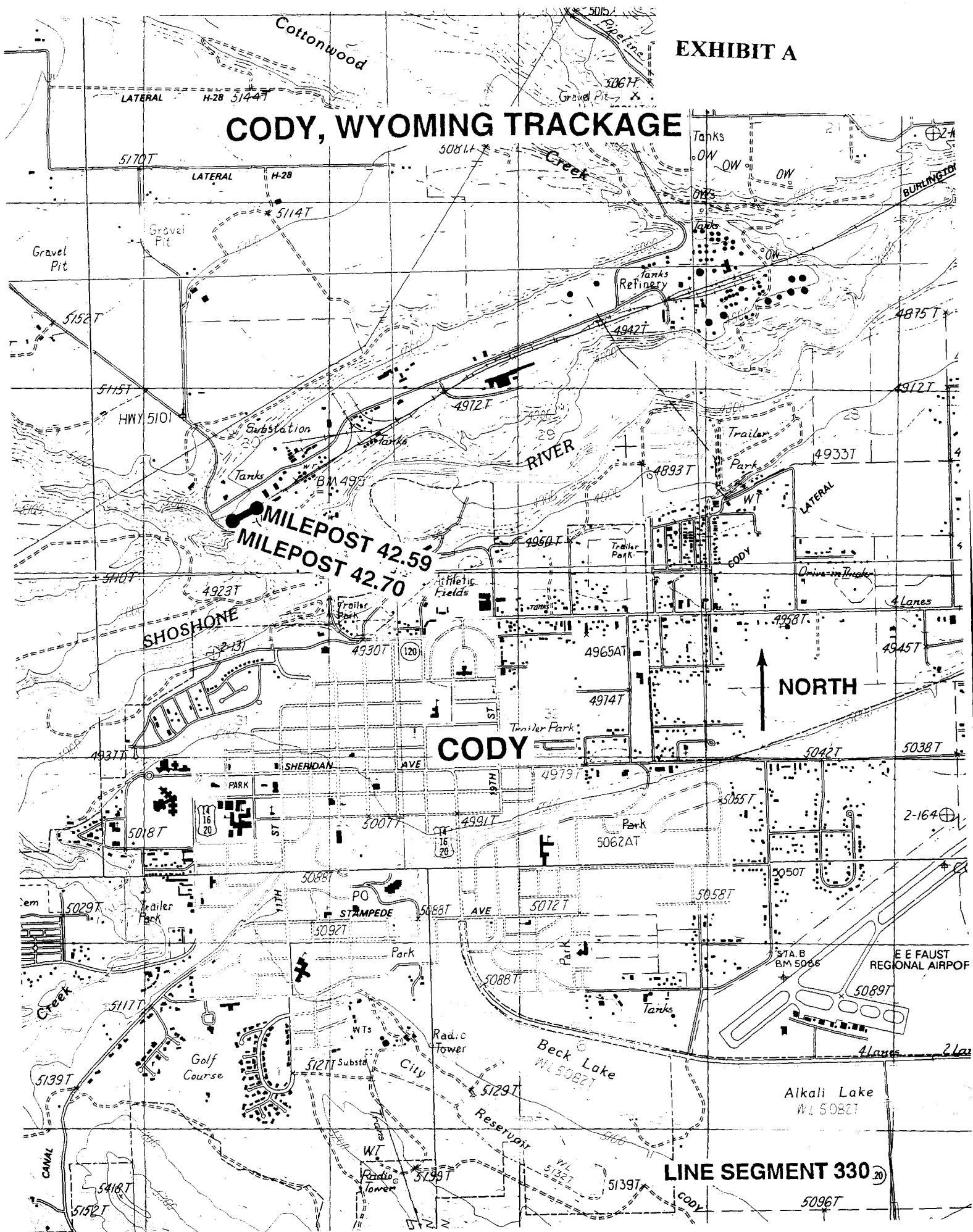
There are no known prior subsurface ground disturbance or fill, environmental conditions that might affect the archeological recovery of resources and the surrounding terrain.

Respectfully submitted,

  
By: SIDNEY L. STRICKLAND, JR.  
SIDNEY STRICKLAND AND ASSOCIATES  
3050 K Street, N.W., Suite 101  
Washington, DC 20007  
(202) 295-4672  
Attorney for BNSF Railway Company

DATED: December 22, 2005

## CODY, WYOMING TRACKAGE





Dave Freudenthal  
Governor

# Department of Transportation

State of Wyoming



John F. Cox  
Director

November 28, 2005

## EXHIBIT B

Sidney L. Strickland, Jr.  
3050 K St. N.W., Suite 101  
Washington, DC 20007-5108

Dear Mr. Strickland:

The Wyoming Department of Transportation recently received your letter regarding a proposed abandonment of 0.11 miles of railroad line between Milepost 42.59 – 42.70 near Cody, Wyoming.

I contacted the following individuals regarding this issue:

Steve Payne, City of Cody  
Bo Bowman, Park County  
Bill Thompson, WYDOT, Railroad Compliance Officer  
Todd Frost, WYDOT, Resident Engineer

The proposed abandonment does not appear to conflict with any future plans of WYDOT or local/county governments and is consistent with local land use plans. We are not aware of any alternate land uses for the corridor at this time.

Please call me if I may be of further assistance.

Gary M. Michaud, M.B.A.

Planner

Wyoming Department of Transportation

**EXHIBIT C**

**BOARD OF COUNTY COMMISSIONERS:**

*Tim A. French, Chairman  
Marie Fontaine, Vice Chairman  
Bucky Hall, Commissioner*



PARK COUNTY, WYOMING  
ORGANIZED 1911

ORIGINAL PARK COUNTY COURTHOUSE  
CODY, WYOMING  
COMPLETED 1912

*Commissioners' Office*  
November 15, 2005

Sidney L. Strickland, Jr.  
Sidney Strickland & Associates, PLLC  
3050 K St. N.W., Suite 101  
Washington, D.C. 20007-5108

**RE: STB Docket No. AB-6 (Sub-No. 436X) BNSF Railway Company -  
Abandonment Exemption in Park County, Wyoming**

Dear Mr. Strickland:

We are in receipt of your letter dated November 4, 2005. At this time, Park County's position is that the proposed action won't affect our land use plan and we are not aware of any alternate public uses for the corridor.

Thank you.

Sincerely,  
**BOARD OF COUNTY COMMISSIONERS  
PARK COUNTY, WYOMING**

*Tim A. French*  
\_\_\_\_\_  
Tim A. French, Chairman

*Marie Fontaine*  
\_\_\_\_\_  
Marie Fontaine, Vice Chairman

*Bucky Hall*  
\_\_\_\_\_  
Bucky Hall, Commissioner



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Username: **Liz Waite**  
(liz.waite@stricklandpllc.com)

Inbox (4)

Drafts

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Message

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From: Frank page <FPage@parkcounty.us>

To: Liz Waite <liz.waite@stricklandpllc.com>

Subject: RE: Railroad Abandonment

Date: 07-Dec-05 12:10 PM

Reply

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As per our phone conversation, Park County has no comment on the proposed abandonment at this time.

Frank Page, PE  
County Engineer  
1002 Sheridan Avenue  
Cody, WY 82414  
  
(307)527-8523 Office  
(307)527-8526 Fax  
fpage@parkcounty.us

-----Original Message-----  
From: Liz Waite [mailto:liz.waite@stricklandpllc.com]  
Sent: Monday, December 05, 2005 8:35 AM  
To: Frank page  
Subject: Railroad Abandonment

Mr. Page,

Add Folder

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Per our conversation on Friday, could you please send me a response to the initial letter sent on Novemebr 4th, even if it simply replies that your agency has no comment at this time. Thank you.

Liz Waite  
Sidney Strickland and Associates, PLLC  
(202) 374-2474



**EXHIBIT E**

November 30, 2005

Sidney Strickland and Associates, PLLC  
3050 K St. N.W. Suite 101  
Washington, DC 20007-5108

**Re: STB Docket No. AB-6 (Sub-No. 436X) BNSF Railway Company – Abandonment  
Exemption – in Park County, WY**

Dear Sidney,

After further investigation of the soils in the area of the abandonment, there will be no effects on prime agricultural lands. If you have any questions, please feel free to contact me at 307-754-9301, Ext. 3.

Sincerely,

A handwritten signature in cursive script that reads "Dicksie Michael".

Dicksie Michael  
District Conservationist  
Powell Field Office



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services  
4000 Airport Parkway  
Cheyenne, Wyoming 82001

DEC 09 2005

In Reply Refer To:  
ES-61411/W.18/WY9947

Sidney L. Strickland, Jr.  
Sidney Strickland and Associates  
3050 K Street NW, Suite 101  
Washington, DC 2007-5108

Dear Mr. Strickland:

Thank you for your letter of November 4, 2005, received in our office on November 14, regarding the proposed abandonment of 0.11 mile of railroad line north of Cody, Park County, Wyoming. Your letter states that the proposed abandonment may require the removal of bridges and structures. You have requested information regarding the potential effects of this project on federally listed species and other important wildlife resources for use during your environmental review. Based on the information in your letter, the U.S. Fish and Wildlife Service (Service) is providing you with the following comments.

**Federal Agency Responsibilities**

The Service has responsibility, under a number of Federal laws, treaties, Executive Orders, and memoranda of agreement, for the conservation and management of fish and wildlife resources. Some of these same authorities also require other federal agencies to consider, avoid, or prevent adverse impacts to fish, wildlife, and wetland resources. To ensure resources are afforded adequate consideration and protection, federal agencies are often required to consult with the Service regarding potential impacts their actions may have on fish and wildlife resources.

Additionally, the Service provides technical guidance and/or consultation where projects may affect (1) threatened, endangered and candidate species, (2) migratory birds, (3) wetlands and riparian areas, (4) and sensitive species, including petitioned species. We recommend specific protective measures for threatened and endangered species in accordance with the Endangered Species Act of 1973, as amended (Act), 16 U.S.C. 1531 *et seq.* We recommend protective measures for migratory birds in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Wetlands are afforded protection under Executive Orders 11990 (wetland protection) and 11988 (floodplain management), as well as section 404 of the Clean Water Act. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act, 48 Stat. 401, as amended, 16 U.S.C. 661 *et seq.* and the Fish and Wildlife Act of 1956, as amended, 70 Stat. 1119, 16 U.S.C. 742a-742j.

In accordance with section 7 of the Act, my staff has determined that the following threatened or endangered species, or species proposed for listing under the Act, may be present in or near the project areas. We would appreciate receiving information as to the current status of each of these species.

SPECIES	STATUS	HABITAT
Bald eagle ( <i>Haliaeetus leucocephalus</i> )	Threatened	Found throughout state
Ute ladies'-tresses ( <i>Spiranthes diluvialis</i> )	Threatened	Seasonally moist soils and meadows of drainages below 7000 feet elevation.

**Bald eagle:** The map which accompanied your letter indicates that the project site may be less than 0.5-mile north of the Shoshone River. The Service is concerned that bald eagles (*Haliaeetus leucocephalus*) may use the river for nesting, winter roosting and/or foraging. Therefore, we are providing the following information to be used during your analysis.

While habitat loss still remains a threat to the bald eagle's full recovery, most experts agree that its recovery to date is encouraging. Adult eagles establish life-long pair bonds and build huge nests in the tops of large trees near rivers, lakes, marshes, or other wetland areas. During winter, bald eagles gather at night to roost in large mature trees, usually in secluded locations that offer protection from harsh weather. Bald eagles often return to use the same nest and winter roost year after year. Because bald eagles are particularly sensitive to human disturbance at their nests and communal roosts, protective buffers should be implemented around these areas [U.S. Bureau of Land Management (BLM) 2003, Buehler et al. 1991, Greater Yellowstone Bald Eagle Working Group (GYBEWG) 1996, Montana Bald Eagle Working Group (MBEWG) 1994, Stalmaster and Newman 1978, U.S. Fish and Wildlife Service (USFWS) 1986].

In Wyoming, general bald eagle protective buffer recommendations include restricting activities within 1 mile of bald eagle nests in open country year round (BLM and USFWS 2002, 2003). In more heavily forested or mountainous areas, where the line-of-sight distance from the nest is shorter, this buffer distance could potentially be reduced (see Stalmaster and Newman 1978, USFWS 1986). The nesting season generally occurs from February 1 to August 15 and bald eagle nest buffers should receive maximum protection during this time period. Also, for some activities (construction, seismic, and timber harvest), a limited disturbance home range buffer may be required to extend outward into potential foraging habitat for 2.5 miles from the nest (GYBEWG 1996). We recommend that you contact the Service to determine the potential impact of your activity to nesting bald eagles if your project will cause disturbance within one of these nest buffer areas.

A communal roost is defined as an area where six or more eagles spend the night within 100 meters (328 feet) of each other (GYBEWG 1996). For bald eagle communal winter roosts, we recommend that disturbance be restricted within 1 mile of known communal winter roosts during the period of November 1 to April 1 (BLM and USFWS 2002, 2003). Additionally, we recommend that ground disturbing activities be prohibited within 0.5 mile of active roost sites year round.

Disturbance sensitivity of roosting and nesting bald eagles may vary between individual eagles, topography, and intensity of activities. The buffers and timing stipulations, as described above, are normally implemented unless site-specific information indicates otherwise. Modification of buffer sizes may be permitted where biologically supported and in coordination with the Service. To complete your analysis we recommend that you obtain current information regarding bald eagle activity within 1-mile of the project area or conduct a raptor survey during the appropriate time of year by a person qualified in raptor ecology. Active nests of other raptor species should be protected with a 0.5-mile buffer (ferruginous hawks and bald eagles require 1-mile).

**Ute ladies'-tresses:** Because the project area may be within or near wetland areas, based on the relationship to the Shoshone River, we would also recommend that you determine if suitable habitat for Ute ladies'-tresses (*Spiranthes diluvialis*) will be disturbed. *S. diluvialis* is a perennial, terrestrial orchid, 8 to 20 inches tall, with white or ivory flowers clustered into a spike arrangement at the top of the stem. *S. diluvialis* typically blooms from late July through August; however, depending on location and climatic conditions, it may bloom in early July or still be in flower as late as early October. *S. diluvialis* is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams where it colonizes early successional point bars or sandy edges. The elevation range of known occurrences is 4,200 to 7,000 feet in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows. Soils where *S. diluvialis* have been found typically range from fine silt/sand, to gravels and cobbles, as well as to highly organic and peaty soil types. *S. diluvialis* is not found in heavy or tight clay soils or in extremely saline or alkaline soils. *S. diluvialis* seems intolerant of shade and small scattered groups are found primarily in areas where vegetation is relatively open. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. *S. diluvialis* is difficult to survey for primarily due to its unpredictability of emergence of flowering parts and subsequent rapid desiccation of specimens. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training or services.

### **Migratory Birds and Bats**

Migratory bird species other than raptors may occur within or near the project area. To avoid a violation of the MBTA and/or BGEPA, the Service recommends that ground disturbing activities be conducted outside of the nesting season. Additionally, the removal of bridges and other structures may impact colonial nesting bird species such as swallows. The structures may also be used by bats as day roosts. Therefore, we recommend that these structures be surveyed for potential use by birds or bats. In the event that such use is observed, we recommend you contact the Service or a local Wyoming Game and Fish biologist to discuss measures to minimize impacts.



### **Wetlands/Riparian Areas**

Wetlands and riparian areas perform significant ecological functions which include: (1) providing habitat for numerous aquatic and terrestrial wildlife species, (2) aiding in the dispersal of floods, (3) improving water quality through retention and assimilation of pollutants from storm water runoff, and (4) recharging the aquifer. They also possess aesthetic and recreational values. The Service recommends measures be taken to avoid and minimize wetland losses in accordance with Section 404 of the Clean Water Act and Executive Order 11988 (floodplain management) as well as the goal of "no net loss of wetlands." If wetlands may be destroyed or degraded by proposed actions, those wetlands should be inventoried and fully described in terms of their functions and

values. Acreage of wetlands, by type, should be disclosed and specific actions should be outlined to avoid, minimize, and compensate for all unavoidable wetland impacts. Riparian or streamside impacts should be avoided whenever possible.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds. If you have further questions regarding this letter or your responsibilities under the Act, please contact Kathleen Erwin of my staff at the letterhead address or phone (307)772-2374, extension 28.

Sincerely,

  
 Brian T. Kelly  
Field Supervisor  
Wyoming Field Office

cc: WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)  
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

#### References






- Buehler, D. A., T. J. Mersmann, J. D. Fraser, and J. K. D. Seegar. 1991. Effects of human activity on bald eagle distribution on the Northern Chesapeake Bay. *Journal of Wildlife Management* 55(2):282-290.
- Greater Yellowstone Bald Eagle Working Group. 1996. Greater Yellowstone Bald Eagle Management Plan: 1995 Update. Greater Yellowstone Bald Eagle Working Group, Wyoming Game and Fish Department, Lander, Wyoming. 47 pp.
- Montana Bald Eagle Working Group. 1994. Montana Bald Eagle Management Plan. Bureau of Reclamation, Montana Projects Office. Billings, Montana. 104 pp.
- Stalmaster, M. V. and J. R. Newman. 1978. Behavioral responses of wintering bald eagles to human activity. *Journal of Wildlife Management* 42(3):506-513.
- U.S. Bureau of Land Management. 2003. Final Statewide Programmatic Bald Eagle Biological Assessment. Prepared for the Wyoming Bureau of Land Management by Greystone Consultants. August 2003. 266 pp. + Appendices.
- U.S. Bureau of Land Management and U.S. Fish and Wildlife Service. 2002. Meeting to discuss Programmatic Bald Eagle Biological Assessment. Met December 12, 2002. Casper, Wyoming.

U.S. Bureau of Land Management and U.S. Fish and Wildlife Service. 2003. Meeting to discuss Programmatic Bald Eagle Biological Assessment. Met January, 28-29, 2003. Casper, Wyoming.

U.S. Fish and Wildlife Service. 1986. Recovery Plan for the Pacific Bald Eagle. U.S. Fish and Wildlife Service, Portland, Oregon. 160 pp.

## EXHIBIT G

[Home](#) [Compose](#) [Address Book](#) [Options](#) [Logout](#)Username: **Liz**  
(liz.waite@stri

-  **Inbox (1)**
-  **Drafts**
-  **Deleted Items**
-  **Sent**
-  **Scheduled**

**Message****Delete** ☐ **Delete permanently**[Move to](#) [Delet](#)**From:** Duane\_Feick@blm.gov**To:** liz.waite@stricklandpllc.com**Subject:** your RR request letter dated Nov 4, 2005**Date:** 06-Dec-05 11:52 AM**Reply**[Reply To All](#)**Forward**[InLine Text](#)< [Previ](#)

Liz-There are no endangered or threatened species, wildlife sanctuaries, refuges, or areas designated as critical habitat adjacent on or near the proposed line abandonment, which is located on the north edge of Cody, WY. The section of line is in an industrial park setting.

Duane Feick  
Bureau of Land Management

STB Docket No. AB-6 BNSF Railway Co. Abandonment exemption

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## United States Department of the Interior

NATIONAL PARK SERVICE  
INTERMOUNTAIN REGION  
12795 West Alameda Parkway  
PO Box 25287  
Denver, Colorado 80225-0287

**EXHIBIT H**

Date: December 16, 2005

Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K St. N.W., Suite 101  
Washington, DC 20007-5101

Subject: STB Docket No. AB-6 (Sub-No. 436X) BNSF Railway Company-  
Abandonment Exemption-Park County, WY

Dear Mr. Strickland:

The National Park Service has reviewed the subject project and has determined that there are no National Park Service units affected. In addition, per our NPS National Landmarks office, there are no National Natural Landmarks affected. In view of this, the National Park Service has no comments on this project.

We appreciate the opportunity to comment. If you have any questions please contact Ms Cheryl Eckhardt at (303) 969-2851.

Sincerely,

W. Wayne Gardner  
Chief of Planning & Environmental Quality

[Home](#) [Compose](#) [Address Book](#) [Options](#) [Logout](#)Username: **Liz**  
(liz.waite@stri [Inbox \(2\)](#)  
 [Drafts](#)  
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 [Scheduled](#)**Message**[Delete](#)☐ [Delete permanently](#)[Move to](#)[Delete](#)**From:** Davis.Gregory@epamail.epa.gov**To:** liz.waite@stricklandpllc.com**Subject:****Date:** 06-Dec-05 03:56 PM**Attachments:** 2003\_cgp.pdf 2003\_cgp\_fact\_sheet.pdf[Reply](#)[Reply To All](#)[Forward](#)[InLine Text](#)[< Previ](#)

Liz,

I received your information regarding the abandonment of the railroad in Park County, WY (STB Docket No. AB-6). This project does not require stormwater permit coverage as the area of the project from milepost 42.59 to 42.70 is less than one acre. Federal and state stormwater regulations require a permit when the exposed area of a project is greater than one acre.

For other railroad abandonment projects, whether or not a stormwater permit is required is site-specific. In most cases, a permit is required for railroad abandonment projects as a stormwater permit is required where clearing, grading, or excavating (i.e., down to bare soils) takes place if more than one acre is disturbed. If excavating down to bear soils is not taking place, a stormwater permit would not be required.

Also, for projects 1-5 acres in size, there are waivers available for EPA stormwater permits. See appendix B of EPA's Construction General Permit (CGP) for more information. Waivers for small construction (1-5 acres) are available for state stormwater permits on a state-by-state basis. Where applicable, the state waivers are generally the same, but the exact process and forms are slightly different.

Where a stormwater permit is required, the rules for inspection of linear construction projects should apply. Representative inspections are acceptable and allow for inspection of the project 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the construction site. This is to limit additional disturbance to soils that may increase the erosion potential resulting from vehicles compromising stabilized areas.

If you have any further questions related to stormwater permits, you may contact me for information, recommendations, or an official EPA position.

\_Greg

(See attached file: 2003\_cgp.pdf)(See attached file: 2003\_cgp\_fact\_sheet.pdf)

[Add Folder](#)

Greg Davis  
EPA Region 8 Storm Water Coordinator  
Mailcode: 8P-W-P  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Phone: 303-312-6314  
Fax: 303-312-6741

<http://www.epa.gov/region8/stormwater>

Please inform me if you would like to receive updates  
related to storm water permits, BMPs, and NPDES regulations.

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Dave Freudenthal, Governor

# Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



John Corra, Director

December 5, 2005

Mr. Sidney Strickland  
Sidney Strickland and Associates, PLLC  
3050 K St. N.W., Suite 101  
Washington, DC 20007-5108

## EXHIBIT J

RE: STB Docket No. AB-6 (Sub-No. 436X) BNSF Railway Company - Abandonment  
Exemption - In Park County, Wyoming

Dear Mr. Strickland:

This letter is in response to your inquiry regarding the necessity of Wyoming Pollutant Discharge Elimination System (WYPDES) permits for the referenced project. You also inquired about Section 402 permits, and I understand that you have been in contact with Jeremy Lyon of the Wyoming DEQ regarding this requirement.

As per Chapter 2, Wyoming Water Quality Rules and Regulations, any discharge of water due to, for example, dewatering of groundwater from a trench during a construction project, where the discharge reaches waters of the state of Wyoming, would need a WYPDES permit for a point source discharge. Short term construction dewatering, involving less than 12 months of discharge, is covered by a general permit in Wyoming. In reviewing the information you provided, it appears unlikely that you would have a point source discharge of water from the construction project. However, if coverage is required, you would need to submit a notice of intent (NOI) for a temporary discharge, which is found in Appendix A of the General Permit for Temporary Discharge. A copy of this document can be found on the DEQ website at <http://deq.state.wy.us/wqd/npdesprogram/downloads/2-2183.pdf>. It appears especially unlikely that you would need coverage for longer than 12 months, which would require an individual permit. If you anticipate needing coverage for a point source discharge, you may call me a 307-777-7090 for assistance.

A WYPDES storm water permit for construction activities is only required if the referenced project will disturb an acre or more. Disturbances of one to five acres are permitted under the small construction general permit (SCGP) and disturbances of five or more acres are covered under the large construction general permit (LCGP). The SCGP and LCGP have the same requirements for the required storm water pollution prevention plan and periodic inspections. The primary difference between the two is that the SCGP is a "do-it-yourself" permit that does not require an application to the Department of Environmental Quality (DEQ), while applicants for the LCGP must submit a Notice of Intent to the DEQ and receive authorization prior to soil disturbing activities. Copies of both permits can be found on the DEQ website at



<http://deq.state.wy.us/wqd/stormwater.asp>. Please call Barb Sahl at 307-777-7570 with any stormwater permitting questions.

Thank you for your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Roland Peterson". The signature is written in black ink and is positioned below the word "Sincerely,".

Roland Peterson, P.G.  
Senior Analyst, WYPDES Permitting  
Water Quality Division

xc: Barb Sahl, WYPDES Permitting  
Jeremy Lyon, DEQ Watershed Mgmt



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
**106 SOUTH 15<sup>TH</sup> STREET**  
**OMAHA NE 68102-1618**

**EXHIBIT K**

November 17, 2005

Planning, Programs, and Project Management Division

Mr. Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K Street N.W., Suite 101  
Washington, DC 20007-5108

Dear Mr. Strickland:

The U.S. Army Corps of Engineers, Omaha District (Corps) has reviewed your letter dated November 4, 2005 regarding the abandonment of 0.11 miles of railroad line between Milepost 42.59 and Milepost 42.70 near Cody in Park County, Wyoming. The Corps does not have any flood plain related comments, but offers the following environmental comments.

Your plans should be coordinated with the U.S. Environmental Protection Agency, which is currently involved in a program to protect ground water resources. If you have not already done so, it is recommended you consult with the U.S. Fish and Wildlife Service and the Wyoming Game and Fish Department regarding fish and wildlife resources. In addition, the Wyoming State Historic Preservation Office should be contacted for information and recommendations on potential cultural resources in the project area.

If construction activities involve any work in waters of the United States, a Section 404 permit may be required. For a detailed review of permit requirements, preliminary and final project plans should be sent to:

U.S. Army Corps of Engineers  
Wyoming Regulatory Office  
Attention: CENWO-OD-R-WY/Bilodeau  
2232 Dell Range Boulevard, Suite 210  
Cheyenne, Wyoming 82009-4942

If you have any questions, please contact Ms. Kristine Nemec at (402) 221-4628.

Sincerely,

Candace M. Gorton, Chief  
Environmental, Economics, and  
Cultural Resources Section  
Planning Branch

# ARTS. PARKS. HISTORY.

EXHIBIT L

Wyoming Department of State Parks and Cultural Resources

## WYOMING STATE HISTORIC PRESERVATION OFFICE

Claudia Nissley

State Historic Preservation Officer

BARRETT BUILDING, 2301 CENTRAL AVE, CHEYENNE, WY 82002

(307) 777-7697

November 15, 2005

Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K St. N.W., Suite 101  
Washington, DC 20007-5108

Re: STB Docket No. AB-6 (Sub-No. 436X) BNSF Railway Company-Abandonment  
Exemption in Park County, WY. (SHPO File # 1105MDB009)

Dear Mr. Strickland:

Thank you for consulting with the Wyoming State Historic Preservation Office (SHPO) regarding the above referenced project. We have reviewed the project report and find the documentation meets the Secretary of the Interior's Standards for Archaeology and Historic Preservation (48 FR 44716-42).

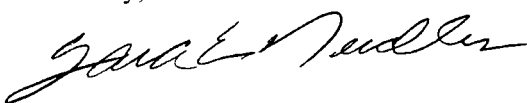
A search of our records conducted on November 15, 2005 for T. 53 N., R. 101 W., Section 30 revealed that the National Register of Historic Places (NRHP) eligible Chicago Burlington and Quincy Railroad (48PA226) is known to exist near the area of potential effect but will not be adversely effected by the project as planned.

We recommend the Surface Transportation Board allow the project to proceed in accordance with state and federal laws and subject to the following stipulation:

If any cultural materials are discovered during construction, work in the area shall halt immediately, the federal agency must be contacted, and the materials evaluated by an archaeologist or historian meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 22716, Sept. 1983).

This letter should be retained in your files as documentation of a SHPO concurrence on your finding of no historic properties adversely affected. Please refer to SHPO project #1105MDB009 on any future correspondence regarding this project. If you have any questions, please contact Matthew Bennett at 307-777-6179.

Sincerely,



Sara E. Needles  
Acting State Historic Preservation Officer



Dave Freudenthal, Governor  
Phil Noble, Director

**CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c) and 8(c)**

BNSF Railway Company ("BNSF"), by and through its authorized representative, Sidney L. Strickland, Jr., certifies that on December 22, 2005, BNSF sent copies of the foregoing Environmental and Historic Reports by first class mail to the following agencies:

USDA Natural Resource Conservation Service  
3124 Federal Building  
100 East "B" Street  
Casper, WY 82601

Dicksie Michael, District Conservationist  
NRCS  
Powell Field Office  
781 Lane 9  
Powell, WY 82435

Sara E. Needles, Acting State Historic Preservation  
Officer  
Wyoming State Historic Preservation Office  
2301 Central Avenue  
Barret Building, Third floor  
Cheyenne, WY 82002

Roland Peterson, P.G.  
Department of Environmental Quality  
Water Quality Division  
Herschler Building  
122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002

Candace M. Morgan, Chief  
U.S. Army Engineer District, Omaha  
Environmental, Economics, and Cultural Resources  
Section  
Planning Branch  
106 S. 15<sup>th</sup> Street  
Omaha, NE 68102-1618

U.S. Fish and Wildlife Service  
Region 6  
P.O. Box 25486  
Denver Federal Center  
Denver, CO 80225

Brian T. Kelly, Field Supervisor  
U.S. Fish and Wildlife Service  
Wyoming Field Office  
Ecological Services  
4000 Airport Parkway  
Cheyenne, WY 82001

Duane Fieck  
Bureau of Land Management  
Cody Field Office  
1002 Blackburn  
P.O. Box 518  
Cody, WY 82414-05128

Wyoming Dept. of State Parks and Cultural Resources  
2301 Central Avenue  
Cheyenne, WY 82002

Frank Page, PE, County Engineer  
Park County Public Works Dept.  
Park County Courthouse  
1002 Sheridan Ave  
Cody, WY 82414

Tim A. French  
Board of County Commissioners  
Park County Courthouse  
1002 Sheridan Ave  
Cody, WY 82414

Wayne Gardner  
U.S. National Park Service  
Intermountain Region  
12795 West Alameda Pkwy  
P.O. Box 25287  
Denver, CO 80228-0287

Greg Davis, Storm Water Coordinator  
U.S. Environmental Protection Agency  
Region 8, MC 8P-W-P  
999 18th Street  
Suite 200  
Denver, CO 80202-2466

Gary M. Michaud, M.B.A., Planner  
Wyoming Department of Transportation  
5300 Bishop Blvd.  
Cheyenne, WY 82009-3340

State Planning Coordinator's Office  
State Capital Building  
Room 124  
Cheyenne, WY 82002

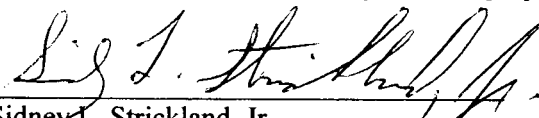
National Oceanic and Atmospheric Administration  
National Geodetic Survey  
1315 East-West Highway  
Silver Springs, MD 20910-3282

Ms. Victoria Ruston  
Chief, SEA  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C., 20423-001

Marie Fontaine  
Board of County Commissioners  
Park County Courthouse  
1002 Sheridan Ave  
Cody, WY 82414

Bucky Hall  
Board of County Commissioners  
Park County Courthouse  
1002 Sheridan Ave  
Cody, WY 82414

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.

  
Sidney L. Strickland, Jr.  
Sidney Strickland and Associates, PLLC  
3050 K St. N.W.,  
Suite 101  
Washington, D.C. 20007

**SIDNEY STRICKLAND AND ASSOCIATES, PLLC**  
3050 K ST. N.W., SUITE 101  
WASHINGTON, DC 20007-5108  
TELEPHONE: 202-295-4024  
FAX: 202-672-5399

SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

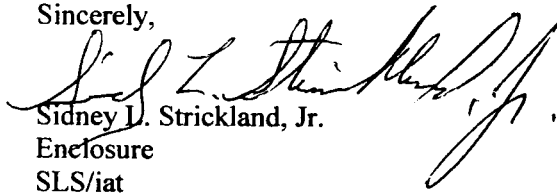
Ms. Victoria Ruston  
Chief, SEA  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C., 20423-001

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Ms. Ruston:

On or about January 11, 2006, BNSF Railway Company ("BNSF") plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 0.11 miles of railroad line between Milepost 42.59 and Milepost 42.70 near Cody in Park County, Wyoming. Attached are Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

Sincerely,

  
Sidney L. Strickland, Jr.  
Enclosure  
SLS/iat

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WASHINGTON, DC 20007-5108  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLCC.COM

December 22, 2005

Marie Fontaine  
Board of County Commissioners  
Park County Courthouse  
1002 Sheridan Ave  
Cody, WY 82414

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Ms. Fontaine:

On or about January 11, 2006, BNSF Railway Company ("BNSF") plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 0.11 miles of railroad line between Milepost 42.59 and Milepost 42.70 near Cody in Park County, Wyoming. Attached are Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

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Your comments will be considered by the STB in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact the undersigned by telephone at (202) 295-4024 or by mail at Sidney Strickland and Associates, PLLC, 3050 K Street, N.W., Suite 101, Washington, DC 20007.

Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.

Enclosure  
SLS/iat

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**3050 K ST. N.W., SUITE 101**  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Roland Peterson, P.G.  
Department of Environmental Quality  
Water Quality Division  
Herschler Building  
122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Mr. Peterson:

On or about January 11, 2006, BNSF Railway Company ("BNSF") plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 0.11 miles of railroad line between Milepost 42.59 and Milepost 42.70 near Cody in Park County, Wyoming. Attached are Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

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Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.

Enclosure  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Sara E. Needles, Acting State Historic Preservation Officer  
Wyoming State Historic Preservation Office  
2301 Central Avenue  
Barret Building, Third floor  
Cheyenne, WY 82002

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Ms. Needles:

On or about January 11, 2006, BNSF Railway Company ("BNSF") plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 0.11 miles of railroad line between Milepost 42.59 and Milepost 42.70 near Cody in Park County, Wyoming. Attached are Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

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Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.

Enclosure  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Dicksie Michael, District Conservationist  
NRCS  
Powell Field Office  
781 Lane 9  
Powell, WY 82435

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Ms. Michael:

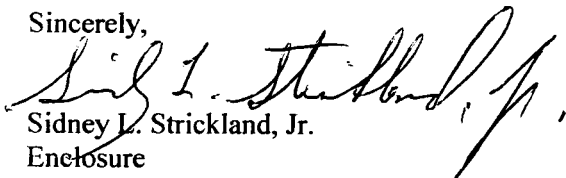
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Sincerely,



Sidney L. Strickland, Jr.

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SIDNEY L. STRICKLAND, JR.  
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December 22, 2005

USDA Natural Resource Conservation Service  
3124 Federal Building  
100 East "B" Street  
Casper, WY 82601

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Sir or Madam:

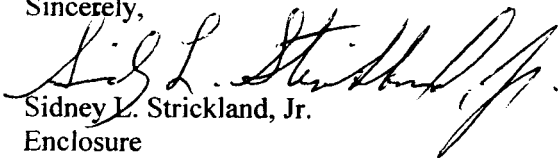
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Thank you in advance for your cooperation.

Sincerely,



Sidney L. Strickland, Jr.

Enclosure  
SLS/iat

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**WASHINGTON, DC 20007-5108**  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Frank Page, PE, County Engineer  
Park County Public Works Dept.  
Park County Courthouse  
1002 Sheridan Ave  
Cody, WY 82414

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Mr. Page:

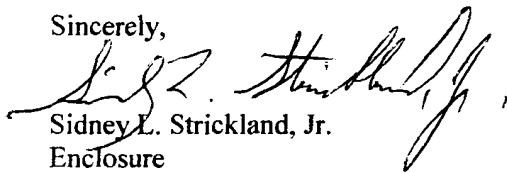
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Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.  
Enclosure  
SLS/iat

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3050 K ST. N.W., SUITE 101  
WASHINGTON, DC 20007-5108  
TELEPHONE: 202-295-4024  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Wyoming Dept. of State Parks and Cultural Resources  
2301 Central Avenue  
Cheyenne, WY 82002

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Sir or Madam:

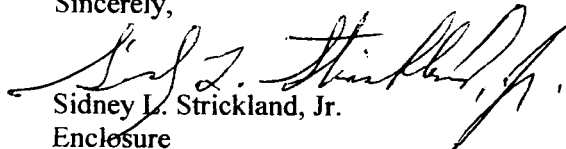
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Thank you in advance for your cooperation.

Sincerely,



Sidney L. Strickland, Jr.

Enclosure

SLS/iat

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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Duane Fieck  
Bureau of Land Management  
Cody Field Office  
1002 Blackburn  
P.O. Box 518  
Cody, WY 82414-05128

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Mr. Fieck:

On or about January 11, 2006, BNSF Railway Company ("BNSF") plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 0.11 miles of railroad line between Milepost 42.59 and Milepost 42.70 near Cody in Park County, Wyoming. Attached are Environmental and Historic Reports describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

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Sidney L. Strickland, Jr.

Enclosure  
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Brian T. Kelly, Field Supervisor  
U.S. Fish and Wildlife Service  
Wyoming Field Office  
Ecological Services  
4000 Airport Parkway  
Cheyenne, WY 82001

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Mr. Kelly:

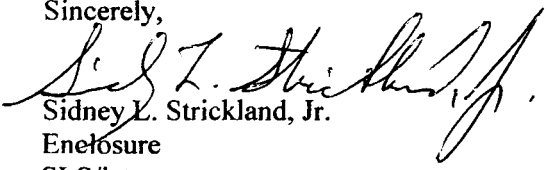
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLCC.COM

December 22, 2005

U.S. Fish and Wildlife Service  
Region 6  
P.O. Box 25486  
Denver Federal Center  
Denver, CO 80225

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

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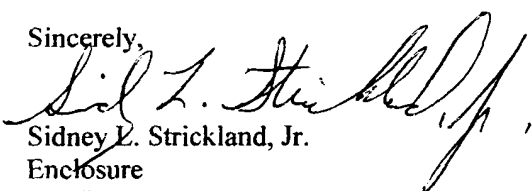
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Thank you in advance for your cooperation.

Sincerely,

  
Sidney L. Strickland, Jr.  
Enclosure  
SLS/iat

**SIDNEY STRICKLAND AND ASSOCIATES, PLLC**  
**3050 K ST. N.W., SUITE 101**  
**WASHINGTON, DC 20007-5108**  
**TELEPHONE: 202-295-4024**  
**FAX: 202-672-5399**

SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Candace M. Morgan, Chief  
U.S. Army Engineer District, Omaha  
Environmental, Economics, and Cultural Resources Section  
Planning Branch  
106 S. 15<sup>th</sup> Street  
Omaha, NE 68102-1618

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Ms. Morgan:

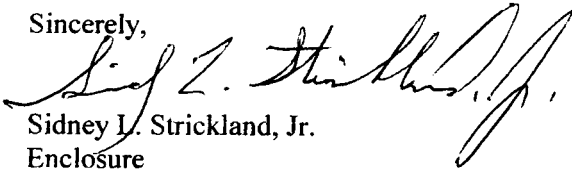
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Wayne Gardner  
U.S. National Park Service  
Intermountain Region  
12795 West Alameda Pkwy  
P.O. Box 25287  
Denver, CO 80228-0287

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Mr. Gardner:

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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Tim A. French  
Board of County Commissioners  
Park County Courthouse  
1002 Sheridan Ave  
Cody, WY 82414

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Mr. French:

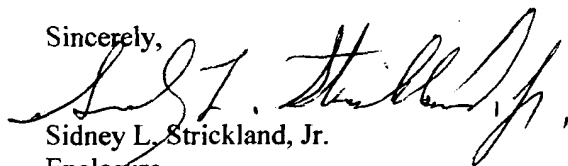
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLCC.COM

December 22, 2005

National Oceanic and Atmospheric Administration  
National Geodetic Survey  
1315 East-West Highway  
Silver Springs, MD 20910-3282

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Sir or Madam:

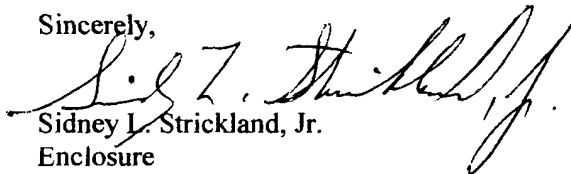
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

State Planning Coordinator's Office  
State Capital Building  
Room 124  
Cheyenne, WY 82002

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Sir or Madam:

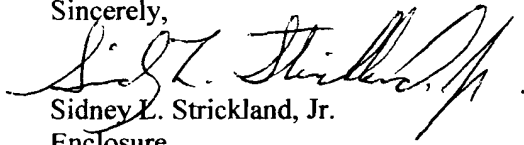
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SIDNEY L. STRICKLAND, JR.  
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

December 22, 2005

Gary M. Michaud, M.B.A., Planner  
Wyoming Department of Transportation  
5300 Bishop Blvd.  
Cheyenne, WY 82009-3340

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

Dear Mr. Michaud:

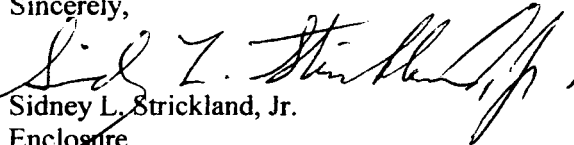
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SIDNEY L. STRICKLAND, JR.  
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December 22, 2005

Greg Davis, Storm Water Coordinator  
U.S. Environmental Protection Agency  
Region 8, MC 8P-W-P  
999 18<sup>th</sup> Street  
Suite 200  
Denver, CO 80202-2466

***Re: STB Docket No. AB-6 (Sub. No. 436X) BNSF Railway Company—  
Abandonment Exemption – in Park County, WY***

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